



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1998

Mr. Charles D. Olson  
Haley & Davis, P.C.  
Triangle Tower, Suite 600  
510 North Valley Mills Drive  
Waco, Texas 76710

OR98-3204

Dear Mr. Olson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120953.

The City of Bellmead (the "city"), which you represent, received a request for twenty-three categories of information about the following: local or long distance telephone service, radar units and vehicles used for traffic enforcement purposes, the prosecution of traffic citations, and expenses reimbursed to city employees. You state that the city does not have documents responsive to several items of the request. You contend that the documents responsive to items P, R, and W of the request are excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and have reviewed a representative sample of the documents at issue.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records

The Open Records Act does not require the city to create new documents in response to an open records request. Open Records Decision Nos. 563 (1990), 561 (1990), 534 (1989). The city should, however, advise the requestor of the types of information available so that he may narrow or clarify his request. *Id.*

We note that four of the five documents submitted to this office for review appear to have been filed with a court. Documents filed with a court are generally considered public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); Attorney General Opinion DM-166 (1992). Therefore, you must make court-filed documents available to the requestor.

We will consider your section 552.108 claim for the remaining document, a past due deferral report. Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

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to the extent that those records contain substantially different types of information than that submitted to this office.

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

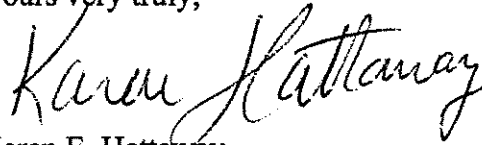
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). First, you have not stated that the document at issue pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming sections 552.108(a)(2) or (b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. It is not clear to this office, nor have you explained, that the document at issue relates to cases that concluded in results other than conviction or deferred adjudication. You do not assert that the document was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state, and therefore the document is not protected by sections 552.108(a)(3) or (b)(3). Finally, most of the information in this document appears to be basic information about an arrested person, an arrest, or a crime. Basic information cannot be withheld from disclosure under section 552.108. Gov't Code § 552.108(c). For these reasons, we find that the past due deferral report is not excepted from disclosure under section 552.108 and should be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 120953

Enclosures: Submitted documents

cc: Mr. T. William Crane  
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(w/o enclosures)